

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOHN AND JANE DOE 2,  
INDIVIDUALLY, and as GUARDIANS  
AD LITEM OF MINOR CHILD DOE 2,

Plaintiffs,

v.

ORTHO-CLINICAL  
DIAGNOSTICS, INC.,

Defendant.

1:03CV00669

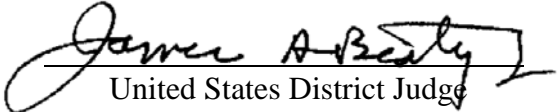
ORDER

BEATY, District Judge.

In this case, Plaintiffs John and Jane Doe 2 (“Plaintiffs”) bring suit based upon their contention that the thimerosal in Defendant Ortho-Clinical Diagnostics, Inc.’s (“Ortho-Clinical”) product RhoGAM® caused their child’s autism. This matter is presently before the Court on a July 19, 2005 Motion by Ortho-Clinical for Summary Judgment [Document #31] pursuant to Rule 56 of the Federal Rules of Civil Procedure. Ortho-Clinical’s sole argument for summary judgment in this Motion is that at the time that Ortho-Clinical filed this Motion, that is, on July 19, 2005, prior to the close of discovery, Plaintiffs had not yet designated an expert to show causation, nor had they provided any expert’s report to Defendant as required by the Joint Rule 26(f) Report and Order entered on December 16, 2004. The December 16, 2004 Joint Rule 26(f) Report and Order [Document #25] required Plaintiffs to submit any expert reports by July 1, 2005.

However, after Ortho-Clinical filed its July 19, 2005 Summary Judgment Motion, the Magistrate Judge held a hearing in this case regarding various discovery issues, and subsequently entered a revised Rule 26(f) Scheduling Order [Document #49], providing for a new deadline of November 15, 2005 for Plaintiffs to designate their experts. Plaintiffs have apparently now designated at least three experts, including Boyd Haley, Ph.D., George Lucier, Ph.D., and Mark Geier, M.D., Ph.D. In response to this designation, Ortho-Clinical filed a Motion to Exclude [Document #63] seeking to exclude the evidence and testimony based upon Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579, 113 S. Ct. 2786 (1993). The Court will consider the Daubert motion after it has been fully briefed by the parties. At this time, however, the Court finds that Ortho-Clinical's July 19, 2005 Motion for Summary Judgment [Document #31] was premature and is now moot given the subsequent extension of discovery deadlines. Therefore, Defendant's July 19, 2005 Motion for Summary Judgment [Document #31] is DENIED AS MOOT.

This, the 16<sup>th</sup> day of March, 2006.

  
United States District Judge